

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	
)	
VANGUARD CELLULAR)	
SYSTEMS INC.,)	
Transferor,)	
)	
AND)	WTB Docket No. 99-481
)	
WINSTON, INC.)	
Transferee,)	
)	
For Consent to Transfer of Control of)	
Licenses and Authorizations)	

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 1999

Released: March 11, 1999

By the Chief, Wireless Telecommunications Bureau:

TABLE OF CONTENTS

	<u>Paragraph</u>
I. INTRODUCTION	1
II. PETITION TO DISMISS OR DENY	4
III. CMRS SPECTRUM CAP	8
IV. PUBLIC INTEREST ANALYSIS	12
A. Legal Standard	12
B. Analytical Framework for Assessing Competitive Effects	13
C. Competitive Analysis	14
1. Relevant Markets	14
2. Markets for Interconnected Mobile Telephone Services	17
3. Other Relevant Markets	21
D. Potential Public Interest Benefits	23
V. CONCLUSION	25
VI. ORDERING CLAUSES	26

I. INTRODUCTION

1 On October 26, 1998, Vanguard Cellular Systems, Inc. ("Vanguard") and Winston, Inc., a subsidiary of AT&T Corp. ("AT&T"),¹ (collectively "Applicants") filed applications seeking Commission consent for the transfer of control of Vanguard's licenses and authorizations to AT&T.² Vanguard provides cellular and other telecommunications services primarily in suburban and rural areas along the Eastern seaboard and in the Midwest. AT&T provides Commercial Mobile Radio Services ("CMRS"), including both cellular and Personal Communications Service ("PCS"), and other telecommunications services throughout the United States. According to the Applicants' Public Interest Showing and Competitive Analysis ("Showing"), the integration of Vanguard and AT&T will enable AT&T to fill strategic gaps in its service area, and permit it to provide additional services to Vanguard's customers. The Applicants also filed a CMRS spectrum cap compliance plan because this transaction otherwise would result in AT&T implicating the CMRS spectrum cap³ in three regions.⁴

2 On December 14, 1998, Portland Cellular Partnership ("Petitioner"), a cellular service provider in the Portland, Maine MSA ("Portland"), filed a Petition to Dismiss or Deny ("Petition").⁵ Petitioner raises procedural issues concerning the Applicant's filing of the Showing, and substantive issues relating to the information provided in the Showing.

3 Section 310(d) of the Communications Act of 1934, as amended, requires that we find that a transfer of control will serve the "public interest, convenience and necessity."⁶ Under this standard, we must determine that the transferee has the requisite qualifications and will be in compliance with our rules and that the public interest will be served by the transaction. In this transaction, no party challenges the transferee's qualifications and we find the transferee to be duly qualified.⁷ We discuss Petitioner's objections below, and deny its Petition. Further, we evaluate the Applicants' plan for complying with the CMRS spectrum cap rule and we analyze the competitive effects of this transaction. We find that the Applicants' current service capabilities are largely complementary and the proposed combination will likely permit AT&T to expand local calling areas for AT&T and Vanguard subscribers at potentially lower prices. Accordingly, we conclude that, subject to the Applicants' fulfilling their commitments to comply with CMRS spectrum cap and other relevant rules, the proposed merger between AT&T and Vanguard will serve the public interest, and we conditionally approve the transfer applications.

¹ For purposes of this order, reference to AT&T includes all subsidiaries of AT&T Corp.

² On November 13, 1998, we issued a Public Notice announcing that the applications had been accepted for filing and initiating a pleading cycle. *See Public Notice*, DA-98-2320.

³ *See* 47 C.F.R. §20.6.

⁴ *See* Supplemental Information filed December 18, 1998 ("Dec. 18, 1998 Supplement").

⁵ Petitioner is the Cellular B Block licensee (KNKQ459) in Portland, Maine. Petition at 1.

⁶ 47 U.S.C. §310(d).

⁷ The Commission has recently approved AT&T's licensee qualifications. *See*, Tele-Communications, Inc. and AT&T Corp., *Memorandum Opinion and Order*, FCC-99-24, (rel. Feb. 18, 1999) ("TCL-AT&T Order").

II. PETITION TO DISMISS OR DENY

4 Petitioner first contends that the Applicants failed to file the Showing with their application. The Applicants respond to this by including a copy of the Showing with their Joint Opposition to the Petition, which was filed on December 18, 1998. Applicants argue that the Showing was "submitted directly . . . to the WTB staff" on November 2, 1998. Petitioner notes, however, that the Showing included with the Opposition did not have its own date-stamp issued by the Commission's Office of the Secretary ("Secretary").⁸ We remind parties that a document is not filed at the Commission until it is filed with the Secretary and it receives a date-stamp. Nevertheless, we will consider the merits of the Showing at this time, as it is undisputed that the Showing was formally filed with the Opposition on December 18, 1998 and has been in the public record for more than 30 days. Moreover, Petitioner acknowledges that the Showing was placed in the public record and has commented on the merits of the Showing. Therefore, we deny Petitioner's procedural contentions.

5 Petitioner also argues that the Showing, as filed, provides insufficient information for an informed decision, and thus, that we should require the Applicants to submit to us copies of all documents submitted to the Department of Justice or Federal Trade Commission as part of the Hart-Scott-Rodino pre-merger review ("HSR Documents").⁹ Petitioner contends that the Showing did not identify or address the competitive impact this transaction will have in Portland, where AT&T holds a 30 MHz PCS license and will be acquiring Vanguard's 25 MHz cellular license.¹⁰

6 In response to Applicants' request, staff from the Commercial Wireless Division ("CWD") met with Petitioner and Applicants on January 8, 1999. To facilitate resolution of this matter, CWD staff requested that Petitioner submit a brief letter listing specific items of information it believed were still necessary to establish a complete record. Petitioner filed a letter on January 14, 1999 claiming that, except for a spreadsheet that lists CMRS operators in each of Vanguard's cellular markets, the Showing did not otherwise describe Portland market conditions.

7 We find that the Showing, as filed, sufficiently describes the competitive situation in Portland. Applicants have identified all markets where Vanguard and AT&T currently hold CMRS licenses.¹¹ Applicants also identified all other carriers with operational systems in each relevant market.¹² Additionally, Applicants submitted a map that depicts areas of overlap between CMRS licenses held by Vanguard and AT&T, and designates the amount of spectrum associated with each license.¹³ This information is sufficient to permit us to make an informed decision about the

⁸ Reply Comments to Joint Opposition to Petition to Dismiss or Deny filed January 6, 1999 ("Reply").

⁹ Petition at 6. Reply at 6.

¹⁰ Reply at 6.

¹¹ See Supplemental Information filed December 7, 1998 ("Dec. 7, 1998 Supplement"). To facilitate processing of applications, we encourage all applicants to provide a clear list of all license areas where they will be accumulating attributable interests in more than 45 MHz of CMRS spectrum. In each of these instances, applicants should briefly describe why the CMRS spectrum cap does not require divestiture, or if divestiture is required, specific information as to how such compliance will be achieved.

¹² See Supplemental Information filed November 18, 1998 ("Nov. 18, 1998 Supplement") at 1-2.

¹³ See Dec. 7, 1998 Supplement.

competitive impact of this transaction in Portland.¹⁴ Therefore, we do not believe that HSR documents are necessary to our evaluation of this matter and we will not require the Applicants to submit them.¹⁵ Based on the foregoing, we will dismiss Petitioner's procedural arguments and we will consider its substantive arguments, that this merger is against the public interest because it eliminates a potential competitor, within our competitive analysis.

III. CMRS SPECTRUM CAP

8 To promote competition and address concerns about possible anti-competitive behavior in CMRS markets, the Commission has adopted a cap on the amount of CMRS spectrum that can be licensed to a single entity within a particular geographic area.¹⁶ Specifically, section 20.6 of the Commission's rules prohibits an entity from having an attributable interest in a total of more than 45 MHz of licensed cellular, broadband PCS, and Specialized Mobile Radio ("SMR") spectrum regulated as CMRS with significant overlap in any geographic area.¹⁷ A "significant overlap" occurs when at least ten percent of the population of the PCS licensed service area lies within the cellular geographic service area(s) and/or SMR service area(s).¹⁸

9 AT&T states that the acquisition of Vanguard's 25 MHz cellular properties will implicate the CMRS spectrum cap in certain counties within the Philadelphia, Cincinnati-Dayton, and Columbus MTAs, where AT&T holds licenses for 30 MHz of PCS spectrum.¹⁹ AT&T states that it has not yet constructed facilities to utilize any of these licenses.²⁰ We note that AT&T may exceed the 45 MHz limit in other markets besides these three but not trigger the CMRS spectrum cap because the population overlap is not "significant."

10 AT&T has committed to divest enough spectrum to comply with the CMRS

¹⁴ In conducting our public interest analysis, we need only obtain "sufficient information to make an informed decision." See *Pacific Telesis Group and SBC Communications, Inc., Memorandum Opinion and Order*, 12 FCC Rcd 2624, 2662 para. 86 (1996) (citing *SBC Communications, Inc. v FCC*, 56 F.3d 1484, 1497 (D.C. Cir. 1995)(quoting *United States v FCC*, 652 F.2d 72, 91 (D.C. Cir. 1980))).

¹⁵ The Commission has discretion whether to review HSR documents based on the requirements of each particular case. See *TCI-AT&T Order*, FCC-99-24, at ¶ 153.

¹⁶ Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, WT Docket 96-59, GN Docket 90-314, *Report and Order*, 11 FCC Rcd. 7824, 7875, (1996) *appeal pending sub nom. Cincinnati Bell Tel Co. v. FCC*, No. 96-3756 (6th Cir.), *recon.* 12 FCC Rcd 14031 (1997), *aff'd sub nom. BellSouth Corporation v. FCC*, No. 97-1630, slip op. (D.C. Cir. Jan 8, 1999) ("*Spectrum Cap Report and Order*"). See also 1998 Biennial Regulatory Review -- Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket 98-205, *Notice of Proposed Rulemaking*, FCC 98-308 ¶¶ 10-18, 32-34 (rel. Dec. 10, 1998) (*CMRS Spectrum Cap NPRM*).

¹⁷ 47 C.F.R. § 20.6. The CMRS spectrum cap is the subject of a pending rulemaking proceeding. See *CMRS Spectrum Cap NPRM*.

¹⁸ 47 C.F.R. §20.6(c)(1).

¹⁹ Nov. 18, 1998 Supplement at 1-3.

²⁰ Nov. 18, 1998 Supplement at 1 (as corrected by Dec. 18, 1998 Supplement).

spectrum cap.²¹ AT&T has partitioned or disaggregated enough spectrum in each market to ensure compliance with the CMRS spectrum cap, and has transferred this spectrum, via a *pro forma* transfer, to a wholly owned subsidiary of AT&T ("10 MHz Licensee").²² AT&T intends to transfer control of this subsidiary to an independent trustee who will effect a sale according to the terms of the divestiture trust agreement.²³ According to this agreement, the Trustee shall have the sole power to sell the trust assets,²⁴ and AT&T will not have the power to revoke the trust or replace the trustee at will.²⁵ Further, the Trustee will not have any familial, personal, or extra-trust business relationship with the grantor or beneficiary.²⁶ The Trust shall terminate within six months, and the licenses will be cancelled if they have not been transferred to an eligible entity.²⁷ Petitioner has not objected to this general divestiture plan.

11 We have reviewed in detail AT&T's divestiture plan and proposed trust agreement, and approve them as in compliance with Commission rules and policies.²⁸ Our approval of the merger between AT&T and Vanguard is subject to two conditions related to compliance with the CMRS spectrum cap. First, prior to consummating the merger with Vanguard, AT&T must file applications to transfer into the divestiture trust licenses representing enough spectrum to comply with the CMRS spectrum cap. We will process these applications expeditiously, and we will require the trustee to consummate this transaction within 10 days after Bureau action. Second, the licenses held by the divestiture trust in these three markets will automatically cancel if the trustee does not transfer or assign the licenses to an eligible entity before the trust terminates.

IV. PUBLIC INTEREST ANALYSIS

A. Legal Standard

12 In addition to ensuring that a transferee is duly qualified and complies with our rules, we also consider the effects on competition of a proposed transfer of control as part of our examination under the "public interest, convenience, and necessity" standard of section 310(d) of the Communications Act.²⁹ At a minimum, this requires that a merger not interfere with the

²¹ Dec. 18, 1998 Supplement at 1.

²² See Applications for Assignment of Authorizations, ULS file nos., 0000003968, 0000003969, 0000003972 (filed Feb. 11, 1999).

²³ Dec. 18, 1998 Supplement at 2.

²⁴ See *Ex Parte* Letter dated March 11, 1999, from Douglas I. Brandon, Vice President, AT&T Wireless, to Magalie R. Salas, Secretary, submitting revised Voting Trust Agreement ("Trust") at §5(a).

²⁵ Trust at §1.

²⁶ Trust at §6(1).

²⁷ Trust at §7.

²⁸ The CMRS spectrum cap provides that stock interests held in trust shall be attributed: (1) to any person who holds or shares the power to vote such stock, (2) to any person who has the sole power to sell such stock, and (3) to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. 47 C.F.R. 20.6(d)(3).

²⁹ Application of WorldCom, Inc. and MCI Communications Corporation, *Memorandum Opinion and Order*, 13

objectives of the Communications Act. This analysis must include, among other things, consideration of the possible competitive effects of the transfer.³⁰ Under Commission precedent, our public interest analysis is not limited to traditional antitrust principles,³¹ but also encompasses the broad aims of the Communications Act,³² including evaluating whether any public interest benefits may result from the merger.³³ Applicants bear the burden of proving that the proposed transaction serves the public interest,³⁴ and we must determine whether they have met this burden.³⁵

B. Analytical Framework for Assessing Competitive Effects

13 Our analysis of competitive effects under the Commission's public interest standard consists of four steps. First, we define the relevant product and geographic markets.³⁶ Second, we identify current and potential participants in each relevant market, especially those that are likely to have a significant competitive effect. Third, we evaluate the effects that the merger may have on competition in the relevant markets.³⁷ Fourth, we consider whether the proposed transaction will result in merger-specific efficiencies, such as cost reductions, productivity enhancements, or

FCC Rcd. 18025, 18030-33, ¶¶ 9-12 (1998) ("*MCI-WorldCom Order*"). The Commission also has independent authority under sections 7 and 11 of Clayton Act to disapprove the acquisition of common carriers engaged in wire or radio communications or radio transmissions of energy in any line of commerce in any section of the country where the effects of such an acquisition may substantially lessen competition, or tend to create a monopoly. 15 U.S.C. §§ 18, 21(a). The Wireless Telecommunications Bureau ("Bureau"), acting pursuant to delegated authority, (47 C.F.R. § 0.331.) chooses not to exercise its statutory authority under the Clayton Act in this case because the Commission's jurisdiction under the Communications Act is sufficient to address all questions regarding the competitive effects of the proposed transfer, including the issue of whether the transfer may substantially lessen competition or tend to create a monopoly. See, e.g., Craig O. McCaw and American Telephone and Telegraph Company, *Memorandum Opinion and Order*, 9 FCC Rcd. 5836 (1994), *reconsideration denied on other grounds*, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd. 11786 (1995); *aff'd sub nom. SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

³⁰ *MCI-WorldCom Order*, 13 FCC Rcd at 18030-33 at ¶¶ 9-12.

³¹ See *Satellite Business Systems*, 62 F.C.C. 2d 997, 1069, 1088 (1977), *aff'd sub. nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*).

³² *MCI-WorldCom Order*, 13 FCC Rcd at 18030 ¶ 9, (citing Applications of NYNEX Corporation and Bell Atlantic Corporation, *Memorandum Opinion and Order*, 12 FCC Rcd. 19985, 19987 ¶ 2 & n.2 (1997)). ("*Bell Atlantic-NYNEX Order*").

³³ *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20063, ¶ 158; Acquisition of MCI Communications Corporation and British Telecommunications PLC, *Memorandum Opinion and Order*, 12 FCC Rcd. 15351, 15367 ¶ 33 (1997) ("*BT-MCI Order*").

³⁴ *MCI-WorldCom Order*, 13 FCC Rcd at 18031 ¶ 10 n.33 (citing 47 U.S.C. § 309(e) (burdens of proceeding and proof rest with the applicant; see, e.g., *LeFlore Broadcasting Co., Inc.*, Docket No. 20026, *Initial Decision*, 66 FCC 2d 734, 736-37 ¶¶ 2-3 (1975) (on the ultimate issue of whether the applicants have the requisite qualifications to be or to remain Commission licensees, and whether a grant of the applications would serve the public interest, convenience and necessity, as on all issues, the burden of proof is on the licensees)).

³⁵ *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20001, 20007, ¶¶ 29, 36; *BT-MCI Order*, 12 FCC Rcd at 15367, ¶ 33.

³⁶ See *Bell Atlantic-NYNEX Order*, 12 FCC Rcd. at 20014, ¶ 49; *BT-MCI Order*, 12 FCC Rcd. at 15368, ¶ 35.

³⁷ Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission 57 Fed. Reg. at 41,558 §§ 2.1, 2.2 ("Guidelines").

improved incentives for innovation.³⁸ In addition to our analysis of merger-specific efficiencies, which is consistent with the approach taken in the *1997 Revised Guidelines*, we consider whether the merger is likely to produce other public interest benefits. Ultimately, we must weigh any harmful and beneficial effects to determine whether, on balance, the merger is likely to enhance competition in the relevant markets.

C. Competitive Analysis

1. Relevant Markets

14 To determine the relevant product and geographic markets, we identify the products (or services, in this case) offered by AT&T and Vanguard, and evaluate the extent to which services offered by other communications companies compete for the business conducted by the merging parties.

15 According to the Applicants, in addition to providing interexchange (long distance) services, AT&T provides mobile communications services. AT&T holds wireless licenses throughout the nation, including the entire northeastern United States, but currently provides service using its own facilities only in the major metropolitan areas within this region.³⁹ Using these facilities, AT&T provides mobile voice services, as well as two-way mobile data services.⁴⁰ AT&T provides wireless services to users demanding access on a regional or nationwide basis, as well as local service to consumers within individual markets.⁴¹ Additionally, AT&T offers Internet access services to residential and business customers through its WorldNET affiliate.⁴² AT&T also provides local exchange services through its Teleport subsidiary, and air-to-ground services.⁴³

16 According to the Applicants, Vanguard operates mobile telephone networks through cellular license holdings covering portions of the Ohio River valley, eastern Pennsylvania, and coastal Maine. Vanguard uses these networks to offer mobile voice telephone services and other capabilities such as two-way mobile data transmission.⁴⁴ Accordingly, we find that Vanguard competes in the provision of mobile telephone and mobile data services in local markets comprising individual metropolitan statistical areas (MSAs) and rural service areas (RSAs) within these regions. Vanguard also holds LMDS licenses that have not yet been placed into service.⁴⁵ In

³⁸ See Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission (Revised, April 8, 1997) ("1997 Revised Guidelines").

³⁹ See Dec. 7, 1998 Supplement.

⁴⁰ Showing at 7.

⁴¹ To the extent that AT&T does not currently provide service in some localities using its own facilities, it maintains agreements with other carriers that enable AT&T customers to "roam."

⁴² Showing at 6.

⁴³ We note that AT&T has filed an application to transfer its air-to-ground license. See File No. 22-499-CG-ML-98.

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 8. To ensure compliance with the Commission's cable/LMDS cross-ownership rule, 47 C.F.R. §101.1003, which may be implicated here due to AT&T's recent acquisition of TCI, AT&T has committed to "comply with the Commission's rules by reducing its holdings in those markets where there is an impermissible cable/LMDS

addition, Vanguard provides long distance services to its cellular customers, but strictly as a reseller.⁴⁶ Vanguard also provides Internet access services to its cellular customers.

2. Markets for Interconnected Mobile Telephone Services

17 Based on the information submitted, we find that Vanguard's CMRS license footprint lies entirely within AT&T's CMRS license footprint. Thus, the relevant geographic markets consist of Vanguard's cellular service areas. Post-merger, AT&T would have an attributable interest in at least 35 MHz of CMRS spectrum in every relevant market.⁴⁷ In none of these markets, however, does AT&T currently provide interconnected mobile telephone services using its own facilities.⁴⁸ Hence, this merger would not eliminate an actual competitor in any market. Rather, the competitive issues before us concern the possible loss of a potential competitor. This merger reduces incentives for AT&T to build out its PCS networks in Vanguard's territories.

18 The Petitioner contends that the proposed merger will eliminate AT&T as a competitor in Portland. However, AT&T is not currently serving Portland as a facilities-based provider. Hence, this merger will not diminish the number of actual competitors in this market. With respect to the alleged elimination of a potential future competitor, we find that, for the reasons set out below, Petitioner has not raised any concerns that prevent us from approving this transaction.

19 In the *Spectrum Cap Report and Order*, the Commission used economic analysis to examine alternative scenarios for the distribution of CMRS spectrum among licensees. By using allocated spectrum, rather than current productive capacity, as measures for market share, the Commission examined conditions of potential competition in these markets rather than actual competition. In conducting its analysis, the Commission found acceptable the prospect for post-auction spectrum aggregation in any one market so long as no single entity held an attributable interest in more than 45 MHz of CMRS spectrum.⁴⁹ Hence, the Commission's examination of alternative competitive scenarios for mobile voice markets based on allocated spectrum was tantamount to evaluating various states of potential competition in these markets. Accordingly, the

overlap." *Id.* at 8. We condition our approval of this transaction on compliance with this rule.

⁴⁶ *Id.* at 6.

⁴⁷ As discussed above, AT&T would have interests exceeding 45 MHz in some markets. However, AT&T is permitted to exceed 45 MHz of spectrum in certain markets, including Portland, under the 10 percent overlap provision. 47 C.F.R. §20.6(c). In other markets where the population overlap is significant, we have conditioned our approval on AT&T divesting portions of its holdings as needed to come into compliance with the CMRS spectrum cap.

⁴⁸ Of course, contractual roaming agreements between AT&T and Vanguard may permit AT&T customers to obtain service when traveling in Vanguard's territory.

⁴⁹ *Spectrum Cap Report and Order*, 11 FCC Rcd 7824, ¶ 95. The Commission noted that "up to a point, horizontal concentration can allow efficiencies and economies that would not be achievable otherwise, and can therefore be pro-competitive, pro-consumer, and in the public interest." *Id.* For purposes of identifying this point, the Commission even found "useful" measures of market concentration, notwithstanding the absence of data on the actual performance of broadband PCS carriers, which were then "under construction in almost all markets." *Id.* at ¶ 96. Thus, the Commission calculated market concentration based on allocated spectrum, rather than on any then current measures of productive ability. *Id.*

Commission found that some reconcentration of spectrum, within limits described by the CMRS spectrum cap, was deemed generally consistent with the public interest. Such is the case in Portland. The aggregation of spectrum in this market complies with the rules of the CMRS spectrum cap.

20 The Commission has recently held that compliance with the spectrum cap does not preclude further analysis of the possible anticompetitive effects of a transaction or imposition of appropriate conditions to remedy those effects.⁵⁰ We are not persuaded, however, that we are presented here with such unusual circumstances that require us to take such action in Portland or in any other market. As discussed above, we have reviewed AT&T's proposed plan for divesting the licenses for its unbuilt systems in the Philadelphia, Cincinnati-Dayton, and Columbus MTAs and find that use of that plan and proposed trust, subject to the conditions we are adopting in this Order, alleviate any competitive concerns, given the competitive conditions in those markets. In Portland, consumers still have a choice from among four mobile telephone service providers (including, now, AT&T), and may yet benefit from the entry of four other entities that hold licenses in this market. In those portions of the Philadelphia, Cincinnati-Dayton, and Columbus MTAs where Vanguard currently holds licenses, consumers will continue to have abundant choices. In those and other Vanguard markets, consumers will still have at least two cellular options, and a minimum of four digital alternatives when operational and prospective entrants are considered.

3. Other Relevant Markets

a. Two-Way Mobile Data Services

21 Both AT&T and Vanguard provide customers with two-way wireless data transmission services known as cellular digital packet data ("CDPD").⁵¹ However, CDPD is supplied only over cellular networks. Applicants do not have overlapping licenses when consideration is limited strictly to their cellular network footprints. Consequently, we determine that Applicants do not currently compete directly with each other in the provision of these services. AT&T and Vanguard may be potential competitors, however. Applicants note that numerous competitors currently provide mobile data services: GTE Wireless and Bell Atlantic Mobile both provide CDPD; and Ardis, BellSouth Mobile Data, and Metricom also provide packet data radio networks.⁵² According to Applicants, more carriers are expected to enter or expand their presence in these markets in the near future, though Applicants do not describe either the extent to which any of these providers currently compete with AT&T or Vanguard, or whether any have plans to do so.⁵³ Based on this record, we find that the existence of numerous competitors, both existing and

⁵⁰ See *TCI-AT&T Order* at ¶¶ 97 - 112 (Based on competitive concerns, the Commission required the complete divestiture of a competitor's stock even though transfer into a qualifying trust or a partial divestiture would have ensured compliance with the CMRS spectrum cap).

⁵¹ Showing at 7.

⁵² Showing at 10. We note, however, that Metricom provides service only on a very limited geographic basis.

⁵³ Showing at 10-11. Previously, we noted that the market for two-way mobile data services consists of highly differentiated services, such that individual products often do not compete effectively with each other. Application of Motorola, Inc. and American Mobile Satellite Corporation for Consent to Transfer Control of Ardis Company, *Memorandum Opinion and Order*, 13 FCC Rcd. 5182, 5187, (WTB 1997) at ¶¶ 2, 76.

prospective, removes any concern that this merger poses a risk of anticompetitive harm in relevant markets for two-way mobile data communications.

b. All Other Markets

22 We determine that there is little or no risk that this merger will increase prospects for anticompetitive harm in any other market. In these other markets, Applicants do not both offer competing products, do not market similar services to the same potential consumers, or do not significantly participate. AT&T recently sold its paging interests, so it does not compete with Vanguard's paging business.⁵⁴ Vanguard is not a significant competitor in the market for long distance services, because it offers these services only as a reseller and only to its cellular customer base.⁵⁵ Vanguard does not provide air-to-ground services, and so does not compete with AT&T in this market.⁵⁶ Both firms provide Internet access, but there is no information in the record suggesting that the proposed merger will limit consumer options in this highly competitive market.⁵⁷ AT&T and Vanguard both hold fixed microwave licenses, but these licenses are used for internal communications and not for the provision of subscriber-based services to the general public.⁵⁸

D. Public Interest Benefits

23 Applicants contend that the proposed merger will produce public interest benefits by enabling AT&T to fill strategic gaps in its operational footprint in the northeastern United States.⁵⁹ They assert that customers will benefit from the larger local calling areas made possible by this merger and through the possible elimination of costly roaming charges for some subscribers. Furthermore, they claim that the integration of Vanguard into AT&T's network will enhance AT&T's ability to compete with Bell Atlantic Mobile, which has been able to provide service along most of the Atlantic Coast since acquiring NYNEX Mobile in 1995. Finally, Applicants contend that the proposed merger will result in system-wide efficiencies. Specifically, they state that "uniform engineering and management, common purchasing, and integrated marketing efforts will drastically reduce administrative costs. Integration will also facilitate the deployment of advanced digital facilities...."⁶⁰

24 We find that this merger should accelerate AT&T's ability to provide expanded service coverage using its own facilities. This merger will fill in gaps in AT&T's operational footprint more surely and swiftly than if AT&T were to build out under its own PCS licenses. As a direct result, AT&T will likely incur lower costs through inter-firm payments associated with

⁵⁴ *Id.* at 8.

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* at 8.

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* at 8-9.

⁵⁹ *Id.* at 12.

⁶⁰ *Id.* at 13.

roaming by AT&T customers on other carriers' networks. This consideration is important to AT&T's effort to support its uniform nationwide pricing plans. We have observed that this initiative has eliminated roaming and long distance charges to the obvious benefit of affected subscribers. We therefore conclude that, on balance, Applicants have demonstrated that these transfers serve the public interest.

V. CONCLUSION

25 For all the foregoing reasons, we conclude that Applicants have met their burden of showing that the proposed merger will serve the public interest, convenience and necessity. Accordingly, we hereby grant the Applications, subject to the conditions set forth herein.

VI. ORDERING CLAUSES

26 IT IS ORDERED, that pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 309, 310(d), that the Petition to Dismiss or Deny filed by Portland Cellular Partnership IS DENIED.

27 IT IS FURTHER ORDERED, that this grant is subject to the condition that AT&T Corp. and subsidiaries thereof, comply with the Commission's cable/LMDS cross-ownership rule, 47 C.F.R. §101.1003.

28 IT IS FURTHER ORDERED, that this grant is subject to the condition that prior to consummation, AT&T Corp. or a subsidiary thereof, file applications with the Commission to assign or transfer the appropriate PCS licenses in the Philadelphia, Cincinnati-Dayton, and Columbus MTAs to the qualifying divestiture trust as approved in this Order. If the transfer to the trust is not consummated within 10 days after the Commission has acted on the applications, the licenses must be surrendered to the Commission. Additionally, if the licenses are not transferred from the trust before the trust expires, the licenses will be cancelled.

29 Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d), that the applications filed by Vanguard Cellular Systems, Inc. and Winston, Inc. in the above captioned proceeding ARE GRANTED subject to the conditions set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau